



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 25, 2011

Sheriff Bill Mills  
Aransas County Sheriff's Office  
301 North Live Oak  
Rockport, Texas 78382

OR2011-04100

Dear Sheriff Mills:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 415155.

The Aransas County Sheriff's Office (the "sheriff") received a request for all records pertaining to two named officers including, information regarding dates of employment, training courses, complaints or disciplinary proceedings, internal affairs investigations, and personnel files. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have only submitted information you claim is criminal history record information ("CHRI") and medical information. To the extent any additional information responsive to the instant request existed when the sheriff received the request for information, we assume you have released it to the requestor. If not, then you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that other statutes make confidential, such as the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in part the following:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is

confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We find the information we have marked constitutes confidential medical records that may only be released in accordance with the MPA. However, we find none of the remaining information constitutes a medical record for purposes of the MPA. Accordingly, the sheriff may not withhold any of the remaining information under section 552.101 on that ground.

A portion of the remaining information contains mental health records. Section 611.002 of the Health and Safety Code governs the public availability of mental health records. Section 611.002, which is also encompassed by section 552.101 of the Government Code, provides in part the following:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining "patient" and "professional"). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to information that is made confidential by section 611.002 only by certain individuals. *See id.* §§ 611.004, .0045; Open Records Decision No. 565 (1990). We have marked mental health records the sheriff must withhold under section 552.101 in conjunction with section 611.002, unless the requestor is authorized to obtain that information under sections 611.004 and 611.0045.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes confidential CHRI generated by the National Crime Information Center

or by the Texas Crime Information Center. *See* Gov't Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. ORD 565. The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. Section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See* Gov't Code § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Additionally, CHRI does not include information relating to routine traffic violations. *See id.* § 411.082(2)(B). The remaining information contains CHRI that is confidential under section 411.083. Thus, the sheriff must withhold this information, which we marked, under section 552.101. However, you have not demonstrated the remaining information at issue constitutes CHRI for purposes of section 411.083. Accordingly, no portion of the remaining information may be withheld under section 552.101 on that basis.

We note section 552.130 of the Government Code may be applicable to portions of the remaining information.<sup>1</sup> Section 552.130 provides that information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1). In this instance, we are unable to determine whether the motor vehicle record information within the remaining information was issued by an agency of this state. Accordingly, to the extent the information we have marked constitutes Texas motor vehicle record information, the sheriff must withhold it under section 552.130 of the Government Code.<sup>2</sup>

---

<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the sheriff may only release the marked medical records in accordance with the MPA. The sheriff must withhold the confidential mental health records we have marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code, unless the requestor is authorized to obtain that information under sections 611.004 and 611.0045 of the Health and Safety Code. The sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. To the extent the information we have marked constitutes Texas motor vehicle record information, the sheriff must withhold it under section 552.130 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/tf

Ref: ID# 415155

Enc. Submitted documents

c: Requestor  
(w/o enclosures)